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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERICK ROSALES-PINEDA,

Defendant - Appellant.

No. 04-10133

D.C. No. CR-03-00364-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Erick Rosales-Pineda appeals his 57-month sentence entered following his guilty plea to Unlawful Reentry of a Deported Alien in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we remand.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Rosales-Pineda was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S. Ct. 738 (2005)).

We take notice, *sua sponte*, of an apparent clerical error in the district court's judgment which references 8 U.S.C. § 326, rather than 8 U.S.C. § 1326. On remand, the district court should correct this clerical error under Fed. R. Crim. P. 36 (“Clerical mistakes in judgments, orders or other parts of the record . . . may be corrected by the court at any time”).

REMANDED.